

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 12-cv-30109 MAP

H. RICHARD AUSTIN.
St. Louis, Missouri
Plaintiff Pro Se

v.

DOUGLAS G. PETERSON & ASSOCIATES,
Greenfield, Massachusetts

STEPHEN W. HOUGHTON,
Greenfield, Massachusetts
Defendants

PLAINTIFF'S RESPONSE TO
THE REPORT AND RECOMMENDATION FOR SUA SPONTE DISMISSAL

Plaintiff opposes dismissal for the following reasons:

1. In his Report the Magistrate disregards and does not mention the controlling fact the current action is brought pursuant to FRCP 60(d)(3) - "fraud on the court." The previous filing before this district court (*Austin V*) was a FRCP 60(d)(1) action for fraud inter parties. The pending Amended Complaint documents at length with clear and convincing evidence this separate claim that the federal court system was also a target of the fraudulent "scheme" perpetrated by these defendants and others during the initial action (*Austin I*). While the First Circuit's order (12/2/09) upholding the prior dismissal is relied on, that order only states that, ("Austin has failed to make out a viable claim under Rule 60(d)(1).") And ("Austin did not make a sufficient showing to warrant relief under Rule(d)(1).")

2. The Report places emphasis on the First Circuit's statement that ("he [Austin] has repeatedly filed duplicative lawsuits and can have no objective good faith expectation